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April 27, 2016

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You are hereby notified that the Court has entered the following opinion and order:

2015AP2600-CRNM State of Wisconsin v. Amanda M. Galkowski (L.C. # 2013CF1396)

Before Reilly, P.J., Gundrum and Hagedorn, JJ.

Amanda M. Galkowski appeals from a judgment of conviction for child abuse—intentionally causing harm. Her appellate counsel has filed a no-merit report pursuant to WIS. STAT. RULE 809.32 (2013-14),¹ and *Anders v. California*, 386 U.S. 738 (1967). Galkowski received a copy of the report, was advised of her right to file a response, and has elected not to do so. Upon consideration of the report and an independent review of the record, we conclude

¹ All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

that the judgment may be summarily affirmed because there is no arguable merit to any issue that could be raised on appeal. *See* WIS. STAT. RULE 809.21.

Galkowski caused injury to her ten-year-old child. She admitted to police that she had “whooped” the child. Galkowski entered a guilty plea and was sentenced to two years’ initial confinement and three years’ extended supervision. Galkowski’s postconviction motion to vacate the DNA surcharge was granted and the sentencing court waived the surcharge.²

We first address whether there is arguable merit to a challenge to Galkowski’s guilty plea.³ To be constitutional, a guilty plea must affirmatively be shown to be knowing, voluntary and intelligent. *State v. Bangert*, 131 Wis. 2d 246, 260, 389 N.W.2d 12 (1986). At the plea hearing, the circuit court must address the defendant personally and fulfill several duties outlined in *Bangert*, WIS. STAT. § 971.08, and additional case law. *State v. Brown*, 2006 WI 100, ¶¶34-35, 293 Wis. 2d 594, 716 N.W.2d 906. These duties include ascertaining whether any promises or threats were made in connection with the plea; establishing the defendant’s understanding of the nature of the crime with which she is charged and the range of punishments to which she is

² The record does not include a transcript of the November 19, 2015 postconviction motion hearing. Because the requested relief was granted, no appellate issue is presented by the postconviction motion and it is not necessary to review the transcript.

³ The no-merit report only discusses whether during the plea colloquy Amanda Galkowski was adequately informed of the maximum potential penalty. The report states: “Ms. Galkowski is not seeking [to] withdraw her plea, so the other plea requirements are not examined here.” The report’s discussion of the plea entry is not adequate because it fails to demonstrate to this court that appointed counsel examined the validity of plea in light of the applicable law such that counsel could advise Galkowski if there were potential grounds for plea withdrawal. A no-merit report which complies with Wisconsin’s discussion requirement serves to assure us that appointed counsel has discharged counsel’s obligation competently and professionally and that the indigent defendant is receiving the same type and level of assistance as would a paying client under similar circumstances. *See State ex rel. McCoy v. Wisconsin Court of Appeals, Dist. 1*, 137 Wis. 2d 90, 100-01, 403 N.W.2d 449 (1987).

subjecting herself; ascertaining whether a factual basis exists to support the plea; informing the defendant of the constitutional rights she is waiving and verifying that she understands that she is giving up these rights; establishing personally that the defendant understands that the sentencing court is not bound by the terms of any plea agreement, including recommendations from the district attorney, in every case where there has been a plea agreement; notifying the defendant of the direct consequences of her plea; and notifying the defendant that if she is not a citizen of the United States, her guilty plea could result in deportation, exclusion from admission to this country, or the denial of naturalization. *Id.*, ¶35.

During the plea colloquy the circuit court fulfilled each of its duties. Additionally, the circuit court ascertained that Galkowski had reviewed a plea questionnaire and waiver-of-rights form and that she understood the information explained on that form. *See State v. Moederndorfer*, 141 Wis. 2d 823, 827-28, 416 N.W.2d 627 (Ct. App. 1987). By reference to the plea questionnaire, the circuit court ascertained Galkowski's understanding of the constitutional rights she was waiving. The maximum penalty was correctly stated and Galkowski confirmed her understanding of the maximum penalty. The circuit court also appropriately relied on the criminal complaint as a factual basis for the plea.⁴ *See State v. Black*, 2001 WI 31, ¶14, 242 Wis. 2d 126, 624 N.W.2d 363 (“If the facts as set forth in the complaint meet the elements of the crime charged, they may form the factual basis for a plea.”). We therefore conclude that there would be no arguable merit to a challenge involving the plea.

⁴ Although the circuit court did not inquire of the parties whether it could use the complaint as the factual basis, it was not required to do so. *State v. Black*, 2001 WI 31, ¶12, 242 Wis. 2d 126, 624 N.W.2d 363 (“[T]he circuit court is not required to satisfy the defendant that he or she committed the crime charged. Indeed, the defendant evidenced his or her own satisfaction by entering a plea and thereby waiving his or her right to a jury trial.”).

The no-merit report addresses whether there is arguable merit to a claim that the sentence was the result of an erroneous exercise of discretion. The no-merit report sets forth the applicable standard of review of the sentence and demonstrates why a challenge to the sentence is without merit. We agree with that conclusion.⁵ Further, we cannot conclude that the five year sentence is so excessive or unusual so as to shock public sentiment. *See Ocanas v. State*, 70 Wis. 2d 179, 185, 233 N.W.2d 457 (1975).

Our review of the record discloses no other potential issues for appeal. Accordingly, this court accepts the no-merit report, affirms the conviction and discharges appellate counsel of the obligation to represent Galkowski further in this appeal.

Upon the foregoing reasons,

IT IS ORDERED that the judgment of conviction is summarily affirmed. *See WIS. STAT. RULE 809.21.*

IT IS FURTHER ORDERED that Attorney Gregory Bates is relieved from further representing Amanda M. Galkowski in this matter. *See WIS. STAT. RULE 809.32(3).*

Diane M. Fremgen
Clerk of Court of Appeals

⁵ We observe that in explaining why probation was not appropriate, the sentencing court referenced that the Department of Corrections' COMPAS assessment placed Galkowski at a high risk for recidivism. Currently pending before the Wisconsin Supreme Court is the issue of whether the right to due process prohibits circuit courts from relying on COMPAS assessments when imposing sentence. *State v. Loomis*, 2015AP157-CR, *certification granted* (WI Nov. 4, 2015). The arguably meritorious claim that a sentencing court's reliance on the COMPAS assessment violates due process is not implicated in this case. The circuit court simply noted the COMPAS assessment and went on to explain its own assessment of Galkowski's risk for recidivism based on the facts before it: "The COMPAS assessment places you at high risk for recidivism. I do agree with that. You have shown a history of noncompliance with the court system, human services department, CHIPS orders, as well as probation and supervision. You're not a candidate, a good candidate for probation therefore." Even if in *Loomis* the COMPAS assessment is questioned as a sentencing tool, there was no actual reliance on the COMPAS assessment in this case because the sentencing court made its own assessment on the facts.